

1 Randall T. Garteiser (CBN 231821)
2 rgarteiser@ghiplaw.com
3 Christopher A. Honea (CBN 232473)
4 chonea@ghiplaw.com
5 GARTEISER HONEA PLLC
6 119 W. Ferguson St.
7 Tyler, Texas 75702
8 Tel/Fax: (888) 908-4400

9 Attorneys for Plaintiff
10 BLUE SPIKE LLC

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13
14 BLUE SPIKE LLC,
15 Plaintiff,

16 v.

17 ASPIRO AB,
18 Defendant.
19
20

Civil Case No.: 2:18-cv-05026

**ORIGINAL COMPLAINT
FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

GARTEISER HONEA – TRIAL ATTORNEYS

GARTEISER HONEA – TRIAL ATTORNEYS

1
2 Plaintiff Blue Spike LLC (“Blue Spike” or “Plaintiff”) files this complaint against
3 the above-named Defendant (“Aspiro”), alleging 5 counts of infringement of the
4 following 5 Patents-in-Suit:
5

6 1. U.S. Patent 7,159,116 B2, titled “Systems, methods and devices for
7 trusted transactions” (the ’116 Patent).

8 2. U.S. Patent 8,538,011 B2, titled “Systems, methods and devices for
9 trusted transactions” (the ’011 Patent).

10 3. U.S. Patent 7,813,506 B2, titled “System and methods for permitting
11 open access to data objects and for securing data within the data objects” (the ’506
12 Patent).

13 4. U.S. Patent 7,664,263 B2, titled “Method for combining transfer
14 functions and predetermined key creation” (the ’263 Patent).

15 5. U.S. Patent 8,265,276 B2, titled “Method for combining transfer
16 functions and predetermined key creation” (the ’276 Patent).

17 *See Exhibits 2–6.*

18 **NATURE OF THE SUIT**

19 1. This is a claim for patent infringement arising under the patent laws of the
20 United States, Title 35 of the United States Code.
21

22 **PARTIES**

23
24 2. Plaintiff Blue Spike LLC is a Texas limited liability company and has its
25 headquarters and principal place of business at 1820 Shiloh Road, Suite 1201-C,
26 Tyler, Texas 75703. Blue Spike LLC is the assignee of the exclusive license of the
27 Patents-in-Suit, and has ownership of all substantial rights in the Patents-in-Suit,
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 including the rights to grant sublicenses, to exclude others from using it, and to sue
2 and obtain damages and other relief for past and future acts of patent infringement.

3
4 3. On information and belief, Defendant Aspiro AB is a company organized under
5 the laws of Sweden, with its principal place of business at Stora Varvsgatan 6 A, SE-
6 211 19 Malmö, Sweden and 1411 Broadway New York, New York 10018. Defendant
7 can be served along with and through its general manager and wholly-owned
8 subsidiary, Aspiro, Inc. *See* California Code of Civil Procedure Section 416.10(b);
9 *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d 1071, 1075–76 (C.D. Cal. 2013). On
10 information and belief, Aspiro, Inc. is a corporation established under the laws of the
11 State of Delaware, with its place of business at 88 1st Street Floor 5, San Francisco,
12 California 94105 and 1411 Broadway New York, New York 10018. Aspiro, Inc. can
13 be served through its registered agent, The Corporation Trust Company, located at
14 The Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.
15
16
17
18

19 JURISDICTION AND VENUE

20 4. This lawsuit is a civil action for patent infringement arising under the patent
21 laws of the United States, 35 U.S.C. § 101 *et seq.* The Court has subject-matter
22 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1338(a), and 1367.
23

24 5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(c) and
25 1400(b) because Defendant has a regular and established place of business in this
26 District. *See*, 28 U.S.C § 1400(b); *TC Heartland LLC v. Kraft Foods Group Brands LLC*,
27 137 S. Ct. 1514, 1521 (2017); *In re Cray Inc.*, 871 F.3d 1355, 1360–4 (Fed. Cir. 2017).
28

1 Foreign corporations that do not reside in the United States are subject to suit under
2 28 U.S.C § 1391(c)(3) in any judicial district.

3
4 6. The Court has personal jurisdiction over Defendant for the following:
5 (1) Defendant has committed acts of patent infringement and contributed to and
6 induced acts of patent infringement by others in this District; (2) Defendant regularly
7 does business or solicits business in this District; (3) Defendant engages in other
8 persistent courses of conduct and derives substantial revenue by its offering of
9 infringing products and services and providing infringing products and services in
10 this District; and (4) Defendant has purposefully established substantial, systematic,
11 and continuous contacts with this District and should reasonably expect to be haled
12 into court here by its offering of infringing products and services and providing
13 infringing products and services in this District.
14
15
16

17 **FACTUAL BACKGROUND**

18 7. Protection of intellectual property is a prime concern for creators and
19 publishers of digitized copies of copyrightable works, such as musical recordings,
20 movies, video games, and computer software. Blue Spike founder Scott Moskowitz
21 pioneered—and continues to invent—technology that makes such protection
22 possible.
23

24
25 8. Blue Spike is a company focused on innovation with research and development.
26 Blue Spike does not make a service that competes directly with Defendant, but Blue
27 Spike has licensed its pioneering patents to competitors of Defendant.
28

1 9. Blue Spike is a practicing entity, just not in the same field as Defendant. For
2 instance, Blue Spike provides pre-release tracking technology for audio, like new
3 music artists' singles, that may be sent to various radio stations for promotional
4 purposes. This type of tracking helps an artist know whether a radio station
5 improperly posts the song for sale rather than simply playing it as a "demo only."
6 Blue Spike also has other service offerings at bluespike.com.
7

8
9 10. Moskowitz is a senior member of the Institute of Electrical and Electronics
10 Engineers (IEEE), a member of the Association for Computing Machinery, and the
11 International Society for Optics and Photonics (SPIE). As a senior member of the
12 IEEE, Moskowitz has peer-reviewed numerous conference papers and has submitted
13 his own publications.
14

15
16 11. Moskowitz is an inventor on more than 110 patents, including forensic
17 watermarking, signal abstracts, data security, software watermarks, service license
18 keys, deep packet inspection, license code for authorized software and bandwidth
19 securitization.
20

21 12. The National Security Agency (NSA) even took interest in his work after he
22 filed one of his early patent applications. The NSA marked the application "classified"
23 under a "secrecy order" while it investigated his pioneering innovations and their
24 impact on national security.
25

26 13. As an industry trailblazer, Moskowitz has been a public figure and an active
27 author on technologies related to protecting and identifying software and multimedia
28

1 content. A 1995 *New York Times* article—titled “TECHNOLOGY: DIGITAL
2 COMMERCE; 2 plans for watermarks, which can bind proof of authorship to
3 electronic works”—recognized Moskowitz’s company as one of two leading software
4 start-ups in this newly created field. *Forbes* also interviewed Moskowitz as an expert
5 for “Cops Versus Robbers in Cyberspace,” a September 9, 1996 article about the
6 emergence of digital watermarking and rights-management technology. He has also
7 testified before the Library of Congress regarding the Digital Millennium Copyright
8 Act.
9

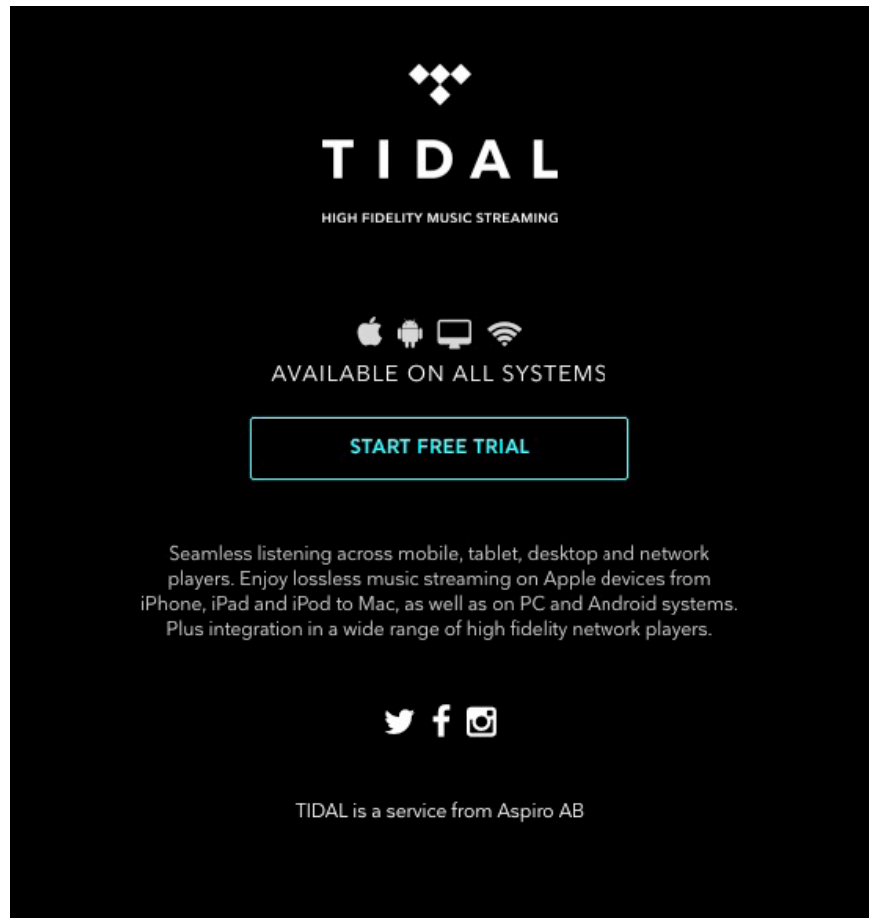
10
11 14. Moskowitz has spoken to the RSA Data Security Conference, the International
12 Financial Cryptography Association, Digital Distribution of the Music Industry, and
13 many other organizations about the business opportunities that digital watermarking
14 creates. Moskowitz also authored *So This Is Convergence?*, the first book of its kind
15 about secure digital-content management. This book has been downloaded over a
16 million times online and has sold thousands of copies in Japan, where Shogakukan
17 published it under the name *Denshi Skashi*, literally “electronic watermark.”
18 Moskowitz was asked to author the introduction to *Multimedia Security Technologies*
19 *for Digital Rights Management*, a 2006 book explaining digital-rights management.
20
21 Moskowitz authored a paper for the 2002 International Symposium on Information
22 Technology, titled “What is Acceptable Quality in the Application of Digital
23 Watermarking: Trade-offs of Security, Robustness and Quality.” He also wrote an
24
25
26
27
28

1 invited 2003 article titled “Bandwidth as Currency” for the *IEEE Journal*, among
2 other publications.

3
4 15. Moskowitz and Blue Spike continue to invent technologies that protect
5 intellectual property from unintended use or unauthorized copying.

6
7 **THE ACCUSED PRODUCTS AND SERVICES**

8 16. Defendant makes, uses, offers for sale and sells in the U.S. products, systems,
9 and/or services that infringe the Patents-in-Suit, including, but not limited to, its
10 TIDAL music services and products (“Accused Products and Services”).
11



28 **Figure 1** – Screen shot of Defendant offering of Accused Products and Services on Defendant webpage, as viewed at <http://tidal.com/us>.

GARTEISER HONEA – TRIAL ATTORNEYS

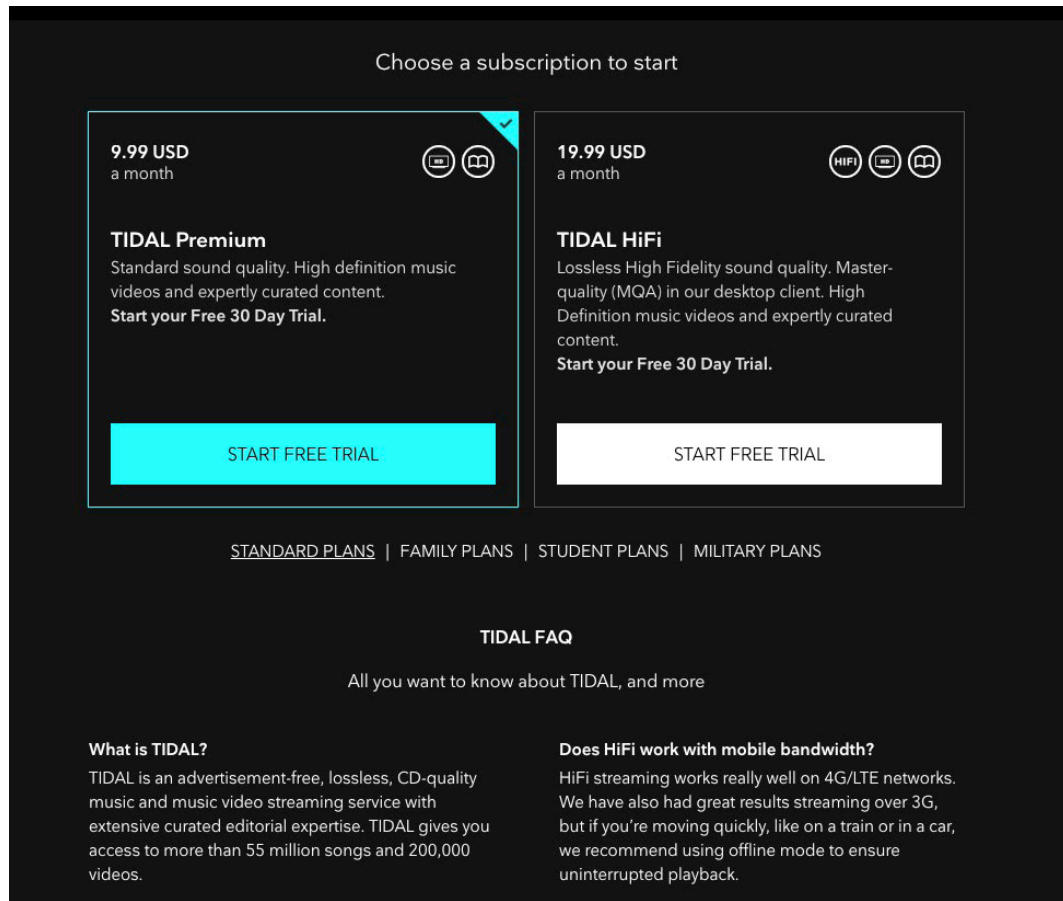


Figure 2 – Screen shot of Defendant offering of Accused Products and Services on Defendant webpage, as viewed at <http://tidal.com/us/try-now>.

17. Defendant has not sought or obtained a license for any of Blue Spike’s patented technologies. This creates a competitive disadvantage to other Companies, like Apple, Acer, Dell, IBM, Samsung, and Sony to name some large companies, who recognized the value and novelty Blue Spike’s patents provide to society.

18. Each count of patent infringement contained herein is accompanied by a representative claim. *See, Atlas IP LLC v. P. Gas and Electric Co.*, 15-CV-05469-EDL, 2016 WL 1719545, at *5 (N.D. Cal. Mar. 9, 2016) (“*Iqbal* and *Twombly* only require Plaintiff to state a plausible claim for relief, which can be satisfied by adequately pleading infringement of one claim.”).

COUNT 1:

INFRINGEMENT OF U.S. PATENT U.S. Patent 7,159,116 B2

19. Blue Spike incorporates by reference the paragraphs above and below.

20. The '116 Patent is presumed valid, enforceable, and was duly and legally issued by the United States Patent and Trademark Office.

21. These claims are directed to a non-abstract improvement in computer functionality, rather than a method of organizing human activity or an idea of itself. *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14, 2018).

22. The specification of the '116 Patent explains both the problem in the prior art and the benefit of the computer-implemented invention. This difference is not “well known” or “conventional.” A human cannot perform these tasks.

23. Without a license or permission from Blue Spike, Defendant has infringed and continues to infringe on one or more claims of the '116 Patent—directly, contributorily, or by inducement—by importing, making, using, offering for sale, or selling products and devices that embody the patented invention, including, without limitation, one or more of the Accused Products and Services, in violation of 35 U.S.C. § 271.

Direct Infringement.

24. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products and Services which practice all the elements of the '116 Patent. For instance, the Accused Products and Services infringe claim 14 of the '116 Patent which recites:

GARTEISER HONEA – TRIAL ATTORNEYS

1 A device for conducting a trusted transaction between at
2 least two parties who have agreed to transact, comprising:
3 means for uniquely identifying information selected from
4 the group consisting of a unique identification of one of the
5 parties, a unique identification of the transaction, a unique
6 identification of value added information to be transacted, a
7 unique identification of a value adding component;
8 a steganographic cipher for generating said unique
9 identification information, wherein the steganographic
10 cipher is governed by at least the following elements: a
11 predetermined key, a predetermined message, and a
12 predetermined carrier signal; and
13 a means for verifying an agreement to transact between the
14 parties.

15 25. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
16 and Services which institute trusted transactions between at least two parties,
17 Defendant and customer, who have agreed to transact and allow the customer to
18 access, download, and play music. *See* Exhibits 1 & A.

19 **Indirect Infringement.**

20 26. Defendant has been and now is indirectly infringing by way of inducing
21 infringement by others and/or contributing to the infringement by others of the '116
22 Patent in this State, in this judicial district, and elsewhere in the United States, by,
23 among other things, making, using, importing, offering for sale, and/or selling,
24 without license or authority, infringing services for use in systems that fall within the
25 scope of one or more claims of the '116 Patent. Such products include, without
26 limitation, one or more of the Accused Products and Services. By making, using,
27
28

1 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
2 thus liable to Blue Spike for infringement of the '116 Patent under 35 U.S.C. § 271.

3
4 27. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
5 Defendant performed actions that induced infringing acts that Defendant knew or
6 should have known would induce actual infringements. *See Manville Sales Corp. v.*
7 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
8 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
9 of inducement requires a threshold finding of direct infringement—either a finding of
10 specific instances of direct infringement or a finding that the accused products
11 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
12 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

13
14
15
16 28. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
17 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
18 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
19 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
20 necessary, direct evidence is not required; rather, circumstantial evidence may
21 suffice.”).

22
23
24 29. Defendant took active steps to induce infringement, such as advertising an
25 infringing use, which supports a finding of an intention for the accused product to be
26 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
27 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
28

1 contributory infringement doctrine “was devised to identify instances in which it may
2 be presumed from distribution of an article in commerce that the distributor intended
3 the article to be used to infringe another’s patent, and so may justly be held liable for
4 that infringement”).

5
6 30. It is not necessary for Plaintiff to indicate specific customers directly infringing
7 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
8 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
9 Cir. 2012).

10
11 **Induced Infringement.**

12
13 31. Defendant induces infringement of its customers, who use the infringing
14 functionality, and its partners and resellers, who offer for sale and sell the Accused
15 Products and Services.

16
17 32. Defendant induces end users of the Accused Products and Services to infringe.
18 Defendant induces its customers to infringe at the very least by providing
19 information on how to access the Internet via its router system.

20
21 33. Defendant also provides customers other incentives to use the infringing
22 services, such as premium services. *See* Exhibit A; *see Power Integrations v.*
23 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
24 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
25 directed to a class of direct infringers (e.g., customers, end users) without requiring
26
27
28

1 hard proof that any individual third-party direct infringer was actually persuaded to
2 infringe by that material.”).

3
4 34. Defendant had knowledge of the '116 Patent at least as early as the service of
5 this complaint, and has known since then that the Accused Products and Services
6 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
7 customers and partners to infringe. It does so through its instructions accompanying
8 the Accused Products and Services, its technical support, demonstrations and
9 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '116
10 Patent by actively inducing infringement.
11

12
13 35. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
14 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
15 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
16 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
17 knowledge or intent “generally, just as the rule states—that is, simply by saying that
18 [it] existed.” *Id.* at 1547.
19

20 21 **Contributory Infringement.**

22
23 36. Defendant is also a contributory infringer. In addition to proving an act of
24 direct infringement, plaintiff contends that defendant knew that the combination for
25 which its components were especially made was both patented and infringing.

26
27 37. The contributory infringement doctrine was devised to identify instances in
28 which it may be presumed from distribution of an article in commerce that the

GARTEISER HONEA – TRIAL ATTORNEYS

1 distributor intended the article to be used to infringe another’s patent, and so may
2 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
3 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).

4
5 38. Defendant contributed to the infringement by providing the Accused Products
6 and Services to its customers, partners and resellers.

7
8 39. The accused functionality in the Accused Products and Services has no
9 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
10 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
11 contributory infringement claim applies to an infringing feature or component). An
12 “infringing feature” of a product does not escape liability simply because the product
13 as a whole has other non-infringing uses. *See id.* at 1321.

14
15
16 **Plaintiff Suffered Damages.**

17 40. Defendant’s acts of infringement of the ’116 Patent have caused damage to Blue
18 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as
19 a result of Defendant’s wrongful acts in an amount described in the prayer below.
20 Defendant’s infringement of Blue Spike’s exclusive rights under the ’116 Patent will
21 continue to damage Blue Spike, causing it irreparable harm, for which there is no
22 adequate remedy at law, warranting an injunction from the Court.

23
24
25 41. On information and belief, the infringement of the ’116 Patent by Defendant has
26 been willful and continues to be willful. Defendant had knowledge of the ’116 Patent,
27 including but not limited to at least one or more of the following events:
28

GARTEISER HONEA – TRIAL ATTORNEYS

- 1 a. The filing of Blue Spike’s complaint against Defendant.
- 2 b. Knowledge of Blue Spike’s filings against its competitors, Spotify and
- 3 Pandora.
- 4
- 5 c. In the course of its due diligence and freedom to operate analyses.
- 6
- 7 d. News coverage of Blue Spike’s enforcement of this patent against
- 8 other infringers.
- 9
- 10 e. Part of the due diligence investigation performed during Sprint’s
- 11 acquisition of 33% ownership of Defendant.

12 42. On information and belief, Defendant has had at least had constructive notice of
13 the ’116 Patent by operation of law. Plaintiff believes the evidence provided shows
14 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to
15 prove egregiousness in its pleadings. “Even after Halo, broader allegations of
16 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
17 motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
18 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss and
19 noting “Defendants’ argument seems to conflate the standards for pleading willful
20 infringement with the standards for proving willful infringement.”).

21 43. A jury is capable, and indeed required, to examine facts that plausibly support a
22 finding of willful infringement. Here, the facts provide “a sufficient predicate” to
23 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
24 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
25
26
27
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 including whether the infringer knew of the other’s patent protection and
2 investigated, the infringers behavior, defendant’s size and financial condition,
3 closeness of the case, duration of misconduct, and remedial action taken by defendant
4 once it was notified of infringement, as factors that are “a sufficient predicate” of fact
5 to support a jury’s finding of willfulness).
6

7
8 44. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
9 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
10 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
11 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
12 knowledge or intent “generally, just as the rule states—that is, simply by saying that
13 [it] existed.” *Id.* at 1547.
14

15
16 **COUNT 2:**

17 **INFRINGEMENT OF U.S. PATENT US Patent 8,538,011 B2**

18 45. Blue Spike incorporates by reference the paragraphs above and below.

19 46. The ’011 Patent is presumed valid, enforceable, and was duly and legally issued
20 by the United States Patent and Trademark Office.
21

22 47. These claims are directed to a non-abstract improvement in computer
23 functionality, rather than a method of organizing human activity or an idea of itself.
24 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
25 2018).
26
27
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 48. The specification of the '011 Patent explains both the problem in the prior art
2 and the benefit of the computer-implemented invention. This difference is not “well
3 known” or “conventional.” A human cannot perform these tasks.

4
5 49. Without a license or permission from Blue Spike, Defendant has infringed and
6 continues to infringe on one or more claims of the '011 Patent—directly,
7 contributorily, or by inducement—by importing, making, using, offering for sale, or
8 selling products and devices that embody the patented invention, including, without
9 limitation, one or more of the Accused Products and Services, in violation of 35
10 U.S.C. § 271.
11

12 **Direct Infringement.**

13
14 50. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
15 and Services which practice all the elements of the '011 Patent. For instance, the
16 Accused Products and Services infringe claim 35 of the '011 Patent which recites:

17
18 A device for conducting trusted transactions between at
19 least two parties, comprising:
20 a steganographic cipher;
21 a controller for receiving input data or outputting output
22 data; and
23 at least one input/output connection,
24 wherein the device has a device identification code stored in
25 the device;
26 an analog to digital converter; and
27 a steganographically ciphered software application;
28 wherein said steganographically ciphered software
application has been subject to a steganographic cipher for
serialization;
wherein said steganographic cipher receives said output
data, steganographically ciphering said output data using a
key, to define steganographically ciphered output data, and

1 transmits said steganographically ciphered output data to
2 said at least one input/output connection;
3 wherein the device is configured to steganographically
4 cipher both value-added information and at least one value-
5 added component associated with the value-added
6 information.

7 51. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
8 and Services which institute trusted transactions between at least two parties,
9 Defendant and customer, who have agreed to transact and allow the customer to
10 access, download, and play music. *See* Exhibits 1 & A.

11 **Indirect Infringement.**

12 52. Defendant has been and now is indirectly infringing by way of inducing
13 infringement by others and/or contributing to the infringement by others of the '011
14 Patent in this State, in this judicial district, and elsewhere in the United States, by,
15 among other things, making, using, importing, offering for sale, and/or selling,
16 without license or authority, infringing services for use in systems that fall within the
17 scope of one or more claims of the '011 Patent. Such products include, without
18 limitation, one or more of the Accused Products and Services. By making, using,
19 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
20 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.
21

22 53. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
23 Defendant performed actions that induced infringing acts that Defendant knew or
24 should have known would induce actual infringements. *See Manville Sales Corp. v.*
25 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
26
27
28

1 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
2 of inducement requires a threshold finding of direct infringement—either a finding of
3 specific instances of direct infringement or a finding that the accused products
4 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
5 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

6
7
8 54. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
9 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
10 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
11 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
12 necessary, direct evidence is not required; rather, circumstantial evidence may
13 suffice.”).

14
15
16 55. Defendant took active steps to induce infringement, such as advertising an
17 infringing use, which supports a finding of an intention for the accused product to be
18 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
19 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
20 contributory infringement doctrine “was devised to identify instances in which it may
21 be presumed from distribution of an article in commerce that the distributor intended
22 the article to be used to infringe another’s patent, and so may justly be held liable for
23 that infringement”).

24
25
26 56. It is not necessary for Plaintiff to indicate specific customers directly infringing
27 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
28

1 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
2 Cir. 2012).

3 **Induced Infringement.**

4
5 57. Defendant induces infringement of its customers, who use the infringing
6 functionality, and its partners and resellers, who offer for sale and sell the Accused
7 Products and Services.
8

9 58. Defendant induces end users of the Accused Products and Services to infringe.
10 Defendant induces its customers to infringe at the very least by providing
11 information on how to access the Internet via its router system.
12

13 59. Defendant also provides customers other incentives to use the infringing
14 services, such as premium services. *See* Exhibit A; *see Power Integrations v. Fairchild*
15 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
16 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
17 directed to a class of direct infringers (e.g., customers, end users) without requiring
18 hard proof that any individual third-party direct infringer was actually persuaded to
19 infringe by that material.”).
20
21

22 60. Defendant had knowledge of the '011 Patent at least as early as the service of
23 this complaint, and has known since then that the Accused Products and Services
24 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
25 customers and partners to infringe. It does so through its instructions accompanying
26 the Accused Products and Services, its technical support, demonstrations and
27
28

1 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '011
2 Patent by actively inducing infringement.

3
4 61. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
5 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
6 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
7 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
8 knowledge or intent “generally, just as the rule states—that is, simply by saying that
9 knowledge or intent “[it] existed.” *Id.* at 1547.

11 **Contributory Infringement.**

12
13 62. Defendant is also a contributory infringer. In addition to proving an act of
14 direct infringement, plaintiff contends that defendant knew that the combination for
15 which its components were especially made was both patented and infringing.

16
17 63. The contributory infringement doctrine was devised to identify instances in
18 which it may be presumed from distribution of an article in commerce that the
19 distributor intended the article to be used to infringe another’s patent, and so may
20 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
21 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).

22
23
24 64. Defendant contributed to the infringement by providing the Accused Products
25 and Services to its customers, partners and resellers.

26
27 65. The accused functionality in the Accused Products and Services has no
28 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d

1 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
2 contributory infringement claim applies to an infringing feature or component). An
3 “infringing feature” of a product does not escape liability simply because the product
4 as a whole has other non-infringing uses. *See id.* at 1321.

6 **Plaintiff Suffered Damages.**

7
8 66. Defendant’s acts of infringement of the ’011 Patent have caused damage to Blue
9 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as
10 a result of Defendant’s wrongful acts in an amount described in the prayer below.
11 Defendant’s infringement of Blue Spike’s exclusive rights under the ’011 Patent will
12 continue to damage Blue Spike, causing it irreparable harm, for which there is no
13 adequate remedy at law, warranting an injunction from the Court.
14

15
16 67. On information and belief, the infringement of the ’011 Patent by Defendant has
17 been willful and continues to be willful. Defendant had knowledge of the ’011 Patent,
18 including but not limited to at least one or more of the following events:

- 19
- 20 a. The filing of Blue Spike’s complaint against Defendant.
 - 21 b. Knowledge of Blue Spike’s filings against its competitors, Spotify
22 and Pandora.
 - 23 c. In the course of its due diligence and freedom to operate analyses.
 - 24 d. News coverage of Blue Spike’s enforcement of this patent against
25 other infringers.
26
27
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 e. Part of the due diligence investigation performed during Sprint's
2 acquisition of 33% ownership of Defendant.

3
4 68. On information and belief, Defendant has had at least had constructive notice of
5 the '011 Patent by operation of law. Plaintiff believes the evidence provided shows
6 Defendant's willful infringement is egregious. Even so, Plaintiff is not required to
7 prove egregiousness in its pleadings. "Even after Halo, broader allegations of
8 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
9 motion to dismiss." *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
10 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant's motion to dismiss and
11 noting "Defendants' argument seems to conflate the standards for pleading willful
12 infringement with the standards for proving willful infringement.>").

13
14
15
16 69. A jury is capable, and indeed required, to examine facts that plausibly support a
17 finding of willful infringement. Here, the facts provide "a sufficient predicate" to
18 support a jury's finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
19 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
20 including whether the infringer knew of the other's patent protection and
21 investigated, the infringers behavior, defendant's size and financial condition,
22 closeness of the case, duration of misconduct, and remedial action taken by defendant
23 once it was notified of infringement, as factors that are "a sufficient predicate" of fact
24 to support a jury's finding of willfulness).

1 70. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
2 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
3 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
4 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
5 knowledge or intent “generally, just as the rule states—that is, simply by saying that
6 [it] existed.” *Id.* at 1547.
7
8

9 **COUNT 3:**

10 **INFRINGEMENT OF U.S. PATENT NO. 7,813,506 B2**

11 71. Blue Spike incorporates by reference the paragraphs above and below.

12 72. The '506 Patent is presumed valid, enforceable, and was duly and legally issued
13 by the United States Patent and Trademark Office.
14

15 73. These claims are directed to a non-abstract improvement in computer
16 functionality, rather than a method of organizing human activity or an idea of itself.
17 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
18 2018).
19

20 74. The specification of the '506 Patent explains both the problem in the prior art
21 and the benefit of the computer-implemented invention. This difference is not “well
22 known” or “conventional.” A human cannot perform these tasks.
23

24 75. Without a license or permission from Blue Spike, Defendant has infringed and
25 continues to infringe on one or more claims of the '506 Patent—directly,
26 contributorily, or by inducement—by importing, making, using, offering for sale, or
27 selling products and devices that embody the patented invention, including, without
28

1 limitation, one or more of the Accused Products and Services, in violation of 35
2 U.S.C. § 271.

3
4 **Direct Infringement.**

5 76. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
6 and Services which practice all the elements of the '506 Patent. For instance, the
7
8 Accused Products and Services infringe claim 6 of the '506 Patent which recites:

9 A method for distributing accessible digital content,
10 comprising:
11 providing a digital content comprising digital data and file
12 format information;
13 selecting a scrambling technique to apply to the digital
14 content;
15 scrambling the digital content using a predetermined key
16 resulting in perceptibly degraded digital content wherein
17 the scrambling technique is based on a plurality of
18 predetermined criteria including at least the criteria of
19 reaching a desired signal quality level for the digital
20 content; and
21 distributing the scrambled digital content.

22 77. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
23 and Services which institute systems and processes for distributing digital content,
24 i.e. music, incorporating scrambling techniques. *See* Exhibits 1 & A.

25
26 **Indirect Infringement.**

27 78. Defendant has been and now is indirectly infringing by way of inducing
28 infringement by others and/or contributing to the infringement by others of the '506
Patent in this State, in this judicial district, and elsewhere in the United States, by,
among other things, making, using, importing, offering for sale, and/or selling,

1 without license or authority, infringing services for use in systems that fall within the
2 scope of one or more claims of the '506 Patent. Such products include, without
3 limitation, one or more of the Accused Products and Services. By making, using,
4 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
5 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.
6

7
8 79. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
9 Defendant performed actions that induced infringing acts that Defendant knew or
10 should have known would induce actual infringements. *See Manville Sales Corp. v.*
11 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
12 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
13 of inducement requires a threshold finding of direct infringement—either a finding of
14 specific instances of direct infringement or a finding that the accused products
15 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
16 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).
17
18

19
20 80. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
21 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
22 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
23 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
24 necessary, direct evidence is not required; rather, circumstantial evidence may
25 suffice.”).
26
27
28

1 81. Defendant took active steps to induce infringement, such as advertising an
2 infringing use, which supports a finding of an intention for the accused product to be
3 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
4 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
5 contributory infringement doctrine “was devised to identify instances in which it may
6 be presumed from distribution of an article in commerce that the distributor intended
7 the article to be used to infringe another’s patent, and so may justly be held liable for
8 that infringement”).

9 82. It is not necessary for Plaintiff to indicate specific customers directly infringing
10 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
11 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
12 Cir. 2012).

13 **Induced Infringement.**

14 83. Defendant induces infringement of its customers, who use the infringing
15 functionality, and its partners and resellers, who offer for sale and sell the Accused
16 Products and Services.

17 84. Defendant induces end users of the Accused Products and Services to infringe.
18 Defendant induces its customers to infringe at the very least by providing
19 information on how to access the Internet via its router system.

20 85. Defendant also provides customers other incentives to use the infringing
21 services, such as premium services. *See Exhibit A; see Power Integrations v. Fairchild*

1 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
2 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
3 directed to a class of direct infringers (e.g., customers, end users) without requiring
4 hard proof that any individual third-party direct infringer was actually persuaded to
5 infringe by that material.”).

6
7
8 86. Defendant had knowledge of the ’506 Patent at least as early as the service of
9 this complaint, and has known since then that the Accused Products and Services
10 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
11 customers and partners to infringe. It does so through its instructions accompanying
12 the Accused Products and Services, its technical support, demonstrations and
13 tutorials. Thus, Defendant is liable for infringement of one or more claims of the ’506
14 Patent by actively inducing infringement.
15

16
17 87. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
18 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
19 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
20 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
21 knowledge or intent “generally, just as the rule states—that is, simply by saying that
22 [it] existed.” *Id.* at 1547.
23
24
25
26
27
28

Contributory Infringement.

88. Defendant is also a contributory infringer. In addition to proving an act of direct infringement, plaintiff contends that defendant knew that the combination for which its components were especially made was both patented and infringing.

89. The contributory infringement doctrine was devised to identify instances in which it may be presumed from distribution of an article in commerce that the distributor intended the article to be used to infringe another's patent, and so may justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).

90. Defendant contributed to the infringement by providing the Accused Products and Services to its customers, partners and resellers.

91. The accused functionality in the Accused Products and Services has no substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a contributory infringement claim applies to an infringing feature or component). An "infringing feature" of a product does not escape liability simply because the product as a whole has other non-infringing uses. *See id.* at 1321.

Plaintiff Suffered Damages.

92. Defendant's acts of infringement of the '506 Patent have caused damage to Blue Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount described in the prayer below.

1 Defendant’s infringement of Blue Spike’s exclusive rights under the ’506 Patent will
2 continue to damage Blue Spike, causing it irreparable harm, for which there is no
3 adequate remedy at law, warranting an injunction from the Court.
4

5 93. On information and belief, the infringement of the ’506 Patent by Defendant has
6 been willful and continues to be willful. Defendant had knowledge of the ’506 Patent,
7 including but not limited to at least one or more of the following events:
8

- 9 a. The filing of Blue Spike’s complaint against Defendant.
- 10 b. Knowledge of Blue Spike’s filings against its competitors, Spotify
11 and Pandora.
- 12 c. In the course of its due diligence and freedom to operate analyses.
- 13 d. News coverage of Blue Spike’s enforcement of this patent against
14 other infringers.
- 15 e. Part of the due diligence investigation performed during Sprint’s
16 acquisition of 33% ownership of Defendant.
17
18
19

20 94. On information and belief, Defendant has had at least had constructive notice of
21 the ’506 Patent by operation of law. Plaintiff believes the evidence provided shows
22 Defendant’s willful infringement is egregious. Even so, Plaintiff is not required to
23 prove egregiousness in its pleadings. “Even after Halo, broader allegations of
24 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
25 motion to dismiss.” *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
26 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant’s motion to dismiss and
27
28

1 noting “Defendants’ argument seems to conflate the standards for pleading willful
2 infringement with the standards for proving willful infringement.”).

3
4 95. A jury is capable, and indeed required, to examine facts that plausibly support a
5 finding of willful infringement. Here, the facts provide “a sufficient predicate” to
6 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
7 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
8 including whether the infringer knew of the other’s patent protection and
9 investigated, the infringers behavior, defendant’s size and financial condition,
10 closeness of the case, duration of misconduct, and remedial action taken by defendant
11 once it was notified of infringement, as factors that are “a sufficient predicate” of fact
12 to support a jury’s finding of willfulness).

13
14
15
16 96. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
17 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
18 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
19 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
20 knowledge or intent “generally, just as the rule states—that is, simply by saying that
21 [it] existed.” *Id.* at 1547.
22

23
24 **COUNT 4:**
25 **INFRINGEMENT OF U.S. PATENT 7,664,263 B2**

26 97. Blue Spike incorporates by reference the paragraphs above and below.

27 98. The ’263 Patent is presumed valid, enforceable, and was duly and legally issued
28 by the United States Patent and Trademark Office.

1 99. These claims are directed to a non-abstract improvement in computer
2 functionality, rather than a method of organizing human activity or an idea of itself.
3
4 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
5 2018).

6 100. The specification of the '263 Patent explains both the problem in the prior art
7 and the benefit of the computer-implemented invention. This difference is not “well
8 known” or “conventional.” A human cannot perform these tasks.

9
10 101. Without a license or permission from Blue Spike, Defendant has infringed and
11 continues to infringe on one or more claims of the '263 Patent—directly,
12 contributorily, or by inducement—by importing, making, using, offering for sale, or
13 selling products and devices that embody the patented invention, including, without
14 limitation, one or more of the Accused Products and Services, in violation of 35
15 U.S.C. § 271.
16
17

18 **Direct Infringement.**

19
20 102. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
21 and Services which practice all the elements of the '263 Patent. For instance, the
22 Accused Products and Services infringe claim 1 of the '263 Patent which recites:

23
24 A method for protecting a digital signal, comprising the
25 steps of:
26 providing a digital signal comprising digital data and file
27 format information defining how the digital signal is
28 encoded;
creating a predetermined key to manipulate the digital
signal wherein the predetermined key comprises a plurality
of mask sets; and

1 manipulating the digital signal using the predetermined key
2 to generate at least one permutation of the digital signal
3 parameterized by the file format information defining how
 the digital signal is encoded.

4 103. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
5 and Services which institute systems and processes for protecting digital signals, i.e.
6 music, by incorporating keys and masks sets. *See* Exhibits 1 & A.

8 **Indirect Infringement.**

9
10 104. Defendant has been and now is indirectly infringing by way of inducing
11 infringement by others and/or contributing to the infringement by others of the '263
12 Patent in this State, in this judicial district, and elsewhere in the United States, by,
13 among other things, making, using, importing, offering for sale, and/or selling,
14 without license or authority, infringing services for use in systems that fall within the
15 scope of one or more claims of the '263 Patent. Such products include, without
16 limitation, one or more of the Accused Products and Services. By making, using,
17 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
18 thus liable to Blue Spike for infringement of the '011 Patent under 35 U.S.C. § 271.

19
20
21
22 105. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
23 Defendant performed actions that induced infringing acts that Defendant knew or
24 should have known would induce actual infringements. *See Manville Sales Corp. v.*
25 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
26 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
27 of inducement requires a threshold finding of direct infringement—either a finding of
28

1 specific instances of direct infringement or a finding that the accused products
2 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
3 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

4
5 106. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
6 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
7 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
8 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
9 necessary, direct evidence is not required; rather, circumstantial evidence may
10 suffice.”).

11
12
13 107. Defendant took active steps to induce infringement, such as advertising an
14 infringing use, which supports a finding of an intention for the accused product to be
15 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
16 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
17 contributory infringement doctrine “was devised to identify instances in which it may
18 be presumed from distribution of an article in commerce that the distributor intended
19 the article to be used to infringe another’s patent, and so may justly be held liable for
20 that infringement”).

21
22
23
24 108. It is not necessary for Plaintiff to indicate specific customers directly infringing
25 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
26 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
27 Cir. 2012).

1 **Induced Infringement.**

2 109. Defendant induces infringement of its customers, who use the infringing
3 functionality, and its partners and resellers, who offer for sale and sell the Accused
4 Products and Services.
5

6 110. Defendant induces end users of the Accused Products and Services to infringe.
7 Defendant induces its customers to infringe at the very least by providing
8 information on how to access the Internet via its router system.
9

10 111. Defendant also provides customers other incentives to use the infringing
11 services, such as premium services. *See Exhibit A; see Power Integrations v. Fairchild*
12 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
13 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
14 directed to a class of direct infringers (e.g., customers, end users) without requiring
15 hard proof that any individual third-party direct infringer was actually persuaded to
16 infringe by that material.”).
17
18

19 112. Defendant had knowledge of the '263 Patent at least as early as the service of
20 this complaint, and has known since then that the Accused Products and Services
21 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
22 customers and partners to infringe. It does so through its instructions accompanying
23 the Accused Products and Services, its technical support, demonstrations and
24 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '263
25 Patent by actively inducing infringement.
26
27
28

1 113. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
2 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
3 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
4 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
5 knowledge or intent “generally, just as the rule states—that is, simply by saying that
6 [it] existed.” *Id.* at 1547.
7

9 **Contributory Infringement.**

10 114. Defendant is also a contributory infringer. In addition to proving an act of
11 direct infringement, plaintiff contends that defendant knew that the combination for
12 which its components were especially made was both patented and infringing.
13

14 115. The contributory infringement doctrine was devised to identify instances in
15 which it may be presumed from distribution of an article in commerce that the
16 distributor intended the article to be used to infringe another’s patent, and so may
17 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
18 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
19

20 116. Defendant contributed to the infringement by providing the Accused Products
21 and Services to its customers, partners and resellers.
22

23 117. The accused functionality in the Accused Products and Services has no
24 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
25 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
26 contributory infringement claim applies to an infringing feature or component). An
27
28

1 “infringing feature” of a product does not escape liability simply because the product
2 as a whole has other non-infringing uses. *See id.* at 1321.

3 **Plaintiff Suffered Damages.**

4
5 118. Defendant’s acts of infringement of the ’263 Patent have caused damage to Blue
6 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as
7 a result of Defendant’s wrongful acts in an amount described in the prayer below.
8 Defendant’s infringement of Blue Spike’s exclusive rights under the ’263 Patent will
9 continue to damage Blue Spike, causing it irreparable harm, for which there is no
10 adequate remedy at law, warranting an injunction from the Court.
11

12
13 119. On information and belief, the infringement of the ’263 Patent by Defendant has
14 been willful and continues to be willful. Defendant had knowledge of the ’263 Patent,
15 including but not limited to at least one or more of the following events:
16

- 17 a. The filing of Blue Spike’s complaint against Defendant.
- 18 b. Knowledge of Blue Spike’s filings against its competitors, Spotify
19 and Pandora.
- 20 c. In the course of its due diligence and freedom to operate analyses.
- 21 d. News coverage of Blue Spike’s enforcement of this patent against
22 other infringers.
- 23 e. Part of the due diligence investigation performed during Sprint’s
24 acquisition of 33% ownership of Defendant.
25
26
27
28

1 120. On information and belief, Defendant has had at least had constructive notice of
2 the '263 Patent by operation of law. Plaintiff believes the evidence provided shows
3 Defendant's willful infringement is egregious. Even so, Plaintiff is not required to
4 prove egregiousness in its pleadings. "Even after Halo, broader allegations of
5 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
6 motion to dismiss." *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
7 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant's motion to dismiss and
8 noting "Defendants' argument seems to conflate the standards for pleading willful
9 infringement with the standards for proving willful infringement.").

10 121. A jury is capable, and indeed required, to examine facts that plausibly support a
11 finding of willful infringement. Here, the facts provide "a sufficient predicate" to
12 support a jury's finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
13 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
14 including whether the infringer knew of the other's patent protection and
15 investigated, the infringers behavior, defendant's size and financial condition,
16 closeness of the case, duration of misconduct, and remedial action taken by defendant
17 once it was notified of infringement, as factors that are "a sufficient predicate" of fact
18 to support a jury's finding of willfulness).

19 122. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
20 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
21 1545-47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
22
23
24
25
26
27
28

1 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
2 knowledge or intent “generally, just as the rule states—that is, simply by saying that
3 [it] existed.” *Id.* at 1547.
4

5 **COUNT 5:**
6 **INFRINGEMENT OF U.S. PATENT U.S. PATENT 8,265,276 B2**

7 123. Blue Spike incorporates by reference the paragraphs above and below.

8 124. The '276 Patent is presumed valid, enforceable, and was duly and legally issued
9 by the United States Patent and Trademark Office.
10

11 125. These claims are directed to a non-abstract improvement in computer
12 functionality, rather than a method of organizing human activity or an idea of itself.
13 *See Aatrix Software, Inc. v. Green Shades Software, Inc.*, 2017-1452 (Fed. Cir. Feb. 14,
14 2018).
15

16 126. The specification of the '276 Patent explains both the problem in the prior art
17 and the benefit of the computer-implemented invention. This difference is not “well
18 known” or “conventional.” A human cannot perform these tasks.
19

20 127. Without a license or permission from Blue Spike, Defendant has infringed and
21 continues to infringe on one or more claims of the '276 Patent—directly,
22 contributorily, or by inducement—by importing, making, using, offering for sale, or
23 selling products and devices that embody the patented invention, including, without
24 limitation, one or more of the Accused Products and Services, in violation of 35
25 U.S.C. § 271.
26
27
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 **Direct Infringement.**

2 128. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
3 and Services which practice all the elements of the '276 Patent. For instance, the
4 Accused Products and Services infringe claim 1 of the '276 Patent which recites:
5

6 A method for protecting a digital signal, comprising the
7 steps of:
8 providing a digital signal comprising digital data and file
9 format information defining how the digital signal is
10 encoded;
11 creating a predetermined key to manipulate the digital
12 signal;
13 manipulating the digital signal using the predetermined key
14 to generate at least one permutation of the digital signal
15 parameterized by the file format information defining how
16 the digital signal is encoded;
17 wherein the predetermined key comprises one or more mask
18 sets having random or pseudo-random series of bits; and
19 validating the one or more mask sets either before or after
20 manipulating the file format information using the
21 predetermined key.

22 129. Defendant makes, uses, offers for sale and sells in the U.S. the Accused Products
23 and Services which institute systems and processes for protecting digital signals, i.e.
24 music, by incorporating keys and masks sets. *See* Exhibits 1 & A.
25

26 **Indirect Infringement.**

27 130. Defendant has been and now is indirectly infringing by way of inducing
28 infringement by others and/or contributing to the infringement by others of the '276
Patent in this State, in this judicial district, and elsewhere in the United States, by,
among other things, making, using, importing, offering for sale, and/or selling,
without license or authority, infringing services for use in systems that fall within the

1 scope of one or more claims of the '276 Patent. Such products include, without
2 limitation, one or more of the Accused Products and Services. By making, using,
3 importing offering for sale, and/or selling such, Defendant injured Blue Spike and is
4 thus liable to Blue Spike for infringement of the '276 Patent under 35 U.S.C. § 271.

5
6 131. Defendant actively induces infringement under Title 35 U.S.C. § 271(b).
7 Defendant performed actions that induced infringing acts that Defendant knew or
8 should have known would induce actual infringements. *See Manville Sales Corp. v.*
9 *Paramount Sys., Inc.*, 917 F.2d 544, 553 (Fed.Cir.1990), quoted in *DSU Med. Corp. v.*
10 *JMS Co.*, 471 F.3d 1293, 1306 (Fed.Cir.2006) (en banc in relevant part). “[A] finding
11 of inducement requires a threshold finding of direct infringement—either a finding of
12 specific instances of direct infringement or a finding that the accused products
13 necessarily infringe.” *Ricoh*, 550 F.3d at 1341 (citing *ACCO Brands, Inc. v. ABA Locks*
14 *Manufacturer Co.*, 501 F.3d 1307, 1313, (Fed. Cir. 2007).

15
16
17
18 132. Plaintiff will rely on direct and/or circumstantial evidence to prove the intent
19 element. *See Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1377 (Fed. Cir.
20 2005) (“A patentee may prove intent through circumstantial evidence.”); *Water Techs.*
21 *Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (“While proof of intent is
22 necessary, direct evidence is not required; rather, circumstantial evidence may
23 suffice.”).

24
25
26 133. Defendant took active steps to induce infringement, such as advertising an
27 infringing use, which supports a finding of an intention for the accused product to be
28

1 used in an infringing manner. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*,
2 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) (explaining that the
3 contributory infringement doctrine “was devised to identify instances in which it may
4 be presumed from distribution of an article in commerce that the distributor intended
5 the article to be used to infringe another’s patent, and so may justly be held liable for
6 that infringement”).
7
8

9 134. It is not necessary for Plaintiff to indicate specific customers directly infringing
10 the Patents-in-Suit through the use of Defendant’s products and services. *See In re*
11 *Bill of Lading Transmission and Processing System Pat. Litig.*, 681 F.3d 1323, 1336 (Fed.
12 Cir. 2012).
13

14 **Induced Infringement.**

15
16 135. Defendant induces infringement of its customers, who use the infringing
17 functionality, and its partners and resellers, who offer for sale and sell the Accused
18 Products and Services.
19

20 136. Defendant induces end users of the Accused Products and Services to infringe.
21 Defendant induces its customers to infringe at the very least by providing
22 information on how to access the Internet via its router system.
23

24 137. Defendant also provides customers other incentives to use the infringing
25 services, such as premium services. *See Exhibit A; see Power Integrations v. Fairchild*
26 *Semiconductor*, 843 F.3d at 1335 (“[W]e have affirmed induced infringement verdicts
27 based on circumstantial evidence of inducement (e.g., advertisements, user manuals)
28

1 directed to a class of direct infringers (e.g., customers, end users) without requiring
2 hard proof that any individual third-party direct infringer was actually persuaded to
3 infringe by that material.”).

4
5 138. Defendant had knowledge of the '276 Patent at least as early as the service of
6 this complaint, and has known since then that the Accused Products and Services
7 infringe the Patents-in-Suit. Nevertheless, Defendant has continued to induce its
8 customers and partners to infringe. It does so through its instructions accompanying
9 the Accused Products and Services, its technical support, demonstrations and
10 tutorials. Thus, Defendant is liable for infringement of one or more claims of the '276
11 Patent by actively inducing infringement.

12
13
14 139. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
15 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
16 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
17 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
18 knowledge or intent “generally, just as the rule states—that is, simply by saying that
19 [it] existed.” *Id.* at 1547.

20
21
22 **Contributory Infringement.**

23
24 140. Defendant is also a contributory infringer. In addition to proving an act of
25 direct infringement, plaintiff contends that defendant knew that the combination for
26 which its components were especially made was both patented and infringing.
27
28

1 141. The contributory infringement doctrine was devised to identify instances in
2 which it may be presumed from distribution of an article in commerce that the
3 distributor intended the article to be used to infringe another's patent, and so may
4 justly be held liable for that infringement. *See Metro-Goldwyn-Mayer Studios Inc. v.*
5 *Grokster, Ltd.*, 545 U.S. 913, 932, 125 S. Ct. 2764, 162 L. Ed. 2d 781(2005).
6

7
8 142. Defendant contributed to the infringement by providing the Accused Products
9 and Services to its customers, partners and resellers.

10 143. The accused functionality in the Accused Products and Services has no
11 substantial non-infringing uses. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F. 3d
12 1301 (Fed. Cir. 2009) (holding that the substantial non-infringing uses element of a
13 contributory infringement claim applies to an infringing feature or component). An
14 "infringing feature" of a product does not escape liability simply because the product
15 as a whole has other non-infringing uses. *See id.* at 1321.
16
17

18 **Plaintiff Suffered Damages.**

19
20 144. Defendant's acts of infringement of the '276 Patent have caused damage to Blue
21 Spike, and Blue Spike is entitled to recover from Defendant the damages sustained as
22 a result of Defendant's wrongful acts in an amount described in the prayer below.
23
24 Defendant's infringement of Blue Spike's exclusive rights under the '276 Patent will
25 continue to damage Blue Spike, causing it irreparable harm, for which there is no
26 adequate remedy at law, warranting an injunction from the Court.
27
28

1 145. On information and belief, the infringement of the '276 Patent by Defendant has
2 been willful and continues to be willful. Defendant had knowledge of the '276 Patent,
3 including but not limited to at least one or more of the following events:
4

- 5 a. The filing of Blue Spike's complaint against Defendant.
- 6 b. Knowledge of Blue Spike's filings against its competitors, Spotify
7 and Pandora.
- 8 c. In the course of its due diligence and freedom to operate analyses.
- 9 d. News coverage of Blue Spike's enforcement of this patent against
10 other infringers.
- 11 e. Part of the due diligence investigation performed during Sprint's
12 acquisition of 33% ownership of Defendant.

13
14
15
16 146. On information and belief, Defendant has had at least had constructive notice of
17 the '276 Patent by operation of law. Plaintiff believes the evidence provided shows
18 Defendant's willful infringement is egregious. Even so, Plaintiff is not required to
19 prove egregiousness in its pleadings. "Even after Halo, broader allegations of
20 willfulness, without a specific showing of egregiousness, are sufficient to withstand a
21 motion to dismiss." *Shire ViroPharma Inc. v. CSL Behring LLC*, CV 17-414, 2018 WL
22 326406, at *3 (D. Del. Jan. 8, 2018) (denying a defendant's motion to dismiss and
23 noting "Defendants' argument seems to conflate the standards for pleading willful
24 infringement with the standards for proving willful infringement.>").
25
26
27
28

1 147. A jury is capable, and indeed required, to examine facts that plausibly support a
2 finding of willful infringement. Here, the facts provide “a sufficient predicate” to
3 support a jury’s finding of willfulness. *See Barry v. Medtronic, Inc.*, 250 F. Supp. 3d 107,
4 111 (E.D. Tex. 2017) (listing a series of nine-factors utilized in the Federal Circuit,
5 including whether the infringer knew of the other’s patent protection and
6 investigated, the infringers behavior, defendant’s size and financial condition,
7 closeness of the case, duration of misconduct, and remedial action taken by defendant
8 once it was notified of infringement, as factors that are “a sufficient predicate” of fact
9 to support a jury’s finding of willfulness).

10 148. The Ninth Circuit has rejected the notion that a plaintiff must allege the facts
11 from which knowledge is to be inferred. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541,
12 1545–47 (9th Cir. 1994), *superseded by statute on other grounds as recognized in Ronconi v.*
13 *Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001). Rather, it is sufficient to allege
14 knowledge or intent “generally, just as the rule states—that is, simply by saying that
15 [it] existed.” *Id.* at 1547.

21 **REQUEST FOR RELIEF**

22 Blue Spike incorporates each of the allegations in the paragraphs above and
23 respectfully asks the Court to:

24 (a) enter a judgment that Defendant has directly infringed, contributorily
25 infringed, and/or induced infringement of one or more claims of each of the Patents-
26 in-Suit in the amount of reasonable royalty based on revenue of accused product and
27
28

GARTEISER HONEA – TRIAL ATTORNEYS

1 service sales of more than \$50 million and more than a total of \$210 million if
2 damages are trebled;

3
4 (b) enter a judgment awarding Blue Spike all damages adequate to compensate it
5 for Defendant’s infringement of, direct or contributory, or inducement to infringe, the
6 Patents-in-Suit, including all pre-judgment and post-judgment interest at the
7 maximum rate permitted by law;
8

9 (c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for
10 Defendant’s willful infringement of one or more of the Patents-in-Suit;
11

12 (d) issue a preliminary injunction and thereafter a permanent injunction enjoining
13 and restraining Defendant, its directors, officers, agents, servants, employees, and
14 those acting in privity or in concert with them, and their subsidiaries, divisions,
15 successors, and assigns, from further acts of infringement, contributory infringement,
16 or inducement of infringement of the Patents-in-Suit;
17

18 (e) enter a judgment requiring Defendant to pay the costs of this action, including
19 all disbursements, and attorneys’ fees as provided by 35 U.S.C. § 285, together with
20 prejudgment interest; and
21

22 (f) award Blue Spike all other relief that the Court may deem just and proper.
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Blue Spike demands a jury trial on all issues that may be determined by a jury.

Respectfully submitted,

Randall T. Garteiser
California Bar No. 231821
rgarteiser@ghiplaw.com

Christopher A. Honea
California Bar No. 232473
chonea@ghiplaw.com

Ian Ramage
California Bar No. 224881
iramage@ghiplaw.com

GARTEISER HONEA
795 Folsom Street, Floor 1
San Francisco, California 94107
Telephone: (415) 785-3762
Facsimile: (415) 785-3805

Counsel for Blue Spike LLC

GARTEISER HONEA – TRIAL ATTORNEYS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this date stamped above.

/s/ Randall Garteiser

GARTEISER HONEA – TRIAL ATTORNEYS